

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Regular Meeting

March 9, 1978
9:00 A.M.

Council Chambers
301 West Second Street

The meeting was called to order with Mayor McClellan presiding.

Roll Call:

Present: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino

Absent: None

Reverend John C. Towery, who was on the agenda to present the Invocation, was not able to be here.

BOYS' CLUB WEEK

MR. WILLIE KOCUREK, MR. DON KORMER, and MASTER WILLIE TAYLOR accepted with their thanks, a proclamation from Mayor McClellan designating March 12-18, 1978, as Boys' Club Week.

EBONY FASHION FAIR DAY

Councilmember Snell read a proclamation naming March 14, 1978, as Ebony Fashion Fair Day, which he presented to MR. MATHEW EDWARDS, who accepted it on behalf of the Huston-Tillotson College Alumni, with their thanks.

INTERART-PUBLIC ART DAY

A proclamation naming March 9, 1978, as Interart-Public Art Day was read by Councilmember Cooke and presented to MS. LINDA BOTTOMS, Director of Interart-Public Art, and MR. TOM ZIGAL.

GIRL SCOUT WEEK

Girl Scout Week will be observed March 12-18, according to the proclamation read by Mayor McClellan. Twelve girls from the Brownie, Junior, Cadette, and Senior level of the Girl Scout Program gathered around the podium to accept the Mayor's proclamation. They were: Allison Harden, Troop 669; Karen Thurmond, Troop 658; Nannette Ahmed, Troop 346; Daniela Ahmed, Troop 604; Pam Wolf, Troop 369; Lisa Mayberry, Troop 369; Laurie Levy, Troop 32; Mira Denton, Troop 427; Maria Golden, Troop 49; Valerie Thomas, Troop 447; Kathy Bedford, Troop 232; Andrea Bridgeman, Troop 232. Members of the Council were presented with boxes of Girl Scout cookies; Nannette Ahmed presented a Girl Scout Handbook to the Mayor; and Lisa Mayberry accepted the proclamation on behalf of the Austin Area Girl Scouts.

**AGENDA ITEM PULLED
EMS QUALITY ASSURANCE ORDINANCE**

Mayor McClellan announced that agenda Item G.1. Amendment to the EMS Quality Assurance Ordinance will not be heard today, but will be back on the Agenda March 16, 1978.

EASEMENT

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving eminent domain proceedings to acquire a temporary working space easement twenty-five (25.00) feet in width (containing 11,500 square feet) for the reconstruction of the Congress Avenue Bridge. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

RELEASE OF EASEMENTS

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing release of the following easement:

A portion of a Public Utility Easement in Lot 9, Block "A," Santa Monica Park, Section Three, locally known as 3504 Colmenero Circle.
(Requested by Shirley Reader, Lumbermen's Investment Corporation)

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing release of the following easement:

Forty-five (45.00) feet of a fifty (50.00) foot Electric Overhang Easement at the rear lot line of Lot 14, Block 5, Barton Terrace Section Three, locally known as 2401 Deerfoot Trail. (Requested by Neal Cukerbaum, Attorney)

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing release of the following easement:

A portion of a fifteen (15.00) foot Drainage Easement in Lot No. 8, Block "E," South Park, Section Two, locally known as 3113 Fontana Drive. (Requested by Shirley Reader, Lumbermen's Investment Corp.)

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing release of the following easement:

A fifteen (15.00) foot Public Utility Easement located between Lots 9 and 10 on the south and Lots 25 and 26 on the north of Block 3, Travis Heights Addition, City of Austin, and locally known as 1308 Alta Vista. (Requested by Mr. G. W. Thompson, P. E., Paul James and Associates)

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing release of the following easement:

A fifteen (15.00) foot Drainage Easement on Lot 5, Block "B" Beverly Hills, Section One, locally known as 4905 West View Drive in the City of Austin, Travis County, Texas. (Requested by Dennis Duff, Agent, for owner.)

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

CONTRACTS

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

CENTEX MATERIALS, INC.
Travis Division
Timberline Office Park

- Recycling Waste Trap Rock Aggregate,
Public Works Department.
12 months service agreement with
option for extension up to twelve
months.
Item 1 - \$25,500.00

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

INTERNATIONAL BUSINESS MACHINES
CORPORATION
1609 Shoemaker Creek Boulevard
Austin, Texas

- Telecommunications Equipment,
Data Systems Department.
Items 1 through 7 - Total price after
rental purchase equity not to exceed
\$185,753.00

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

CMR, INC.
302 East 3rd Street
Austin, Texas

- Microfilming Services, Municipal
Courts.
12 months service agreement with
option for two one-year extensions.
Item 1 - \$7,875.00

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

TRUCK SPECIALTY INDUSTRIES
6540 South Interregional
Austin, Texas

- Truck Mounted Equipment, Vehicle and Equipment Services Department
- Item sheet HB-2-A - 1 ea. @ \$10,183.00
- Item sheet HB-3-A - 1 ea. @ \$ 9,793.00
- Item sheet LB-21 - 1 ea. @ \$ 5,100.00
- Total: \$25,076.00

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contracts:

Bid Award:

TRUCK SPECIALTY INDUSTRIES
6540 South Interregional
Austin, Texas

- Light Duty Truck Bodies, Vehicle and Equipment Services Department.
- Item LB-1, LB-3, LB-5, LB-6, LB-9, LB-11, LB-15, LB-16, LB-17, LB-18, LB-19, LB-20 - \$82,057.50

COMMERCIAL BODY CORPORATION
Fifth at Pedernales
Austin, Texas

- Items LB-4, LB-7 and LB-8
\$35,473.00

MOBILE EQUIPMENT COMPANY
211 Meadow Lea
Houston, Texas

- Items LB-12, LB-13, and LB-14 -
\$14,384.00

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contracts:

Bid Award:

WESTINGHOUSE ELECTRIC SUPPLY
9230 Research Boulevard
Austin, Texas

- Floodlights, Electric Department.
- Item 1 - 15 ea. @ \$128.50
- Total - \$1,927.50

NUNN ELECTRIC SUPPLY COMPANY
206 East 4th Street
Austin, Texas

- Item 2 - 17 ea. @ \$201.00
Item 3 - 48 ea. @ \$228.00
Total - \$14,361.00

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

AUSTIN ROAD COMPANY
423 East Anderson Lane
Austin, Texas

- CAPITAL IMPROVEMENTS PROGRAM -
Parking Lot Improvements, Senior
Citizens Activity Center -
\$22,136.56 CIP No. 76/86-41

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

ROBERT WILLIAM JENTSCH
5109 Manchaca Road
Austin, Texas

- CAPITAL IMPROVEMENTS PROGRAM -
Pedestrian Bridge over Johnson
Creek at Missouri-Pacific (MoPac)
Boulevard - \$18,800.00
CIP No. 75/79-01

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

ALTON WATSON CONSTRUCTION
COMPANY
8908 Glenn Lane
Austin, Texas

- CAPITAL IMPROVEMENTS PROGRAM -
North District Maintenance
Facility Building at Walnut Creek
Park - \$101,740.00 CIP No. 75/86-36

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving the following contract:

PANHANDLE CONSTRUCTION COMPANY
P. O. Box 1500
Amarillo Highway
Lubbock, Texas

- CAPITAL IMPROVEMENTS PROGRAM -
Construction of Bell Avenue 8-inch
Wastewater Mains - \$225,590.00
CIP No. 75/50-02

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

CONTRACT WASTEWATER SERVICES

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing a contract with Scott Van Demark for extension of wastewater services. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

RESTRICTIVE COVENANT

Mayor Pro Tem Trevino moved that the Council adopt a resolution amending the restrictive covenant on Zoning Case No. C14-74-028 made by the Fawnridge Development Corporation in relation to 7901-7907 South 1st Street. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

LEASE AGREEMENT

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving a two-year optional renewal lease agreement for a 2,400 square foot branch library in the Twin Oaks Shopping Center. (Monthly rent of \$435, or about 18 cents per square foot per month.) The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

LEASE AGREEMENT

Mayor Pro Tem Trevino moved that the Council adopt a resolution approving exercising the first of a two, two-year optional renewal lease agreement for a 2,900 square foot branch library in the North Loop Plaza Shopping Center. (Monthly rent of \$761.25 or 26 cents per square foot per month) The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

TEXAS LIBRARY SYSTEM

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing renewal of the Austin Public Library's membership in the Texas Library System. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

P-1 RESTRICTIONS
BRACKENRIDGE URBAN RENEWAL

Mayor Pro Tem Trevino moved that the Council bring back on the agenda for March 16, 1978, consideration of a temporary waiver of the P-1 restrictions under the Brackenridge Urban Renewal Plan applicable to area of former Fehr and Granger Building, the Historic Stone Building adjoining the Fehr and Granger Building and the parking lot connecting the two structures. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

STREET CLOSING

Mayor Pro Tem Trevino moved that the Council adopt a resolution temporarily closing the following streets on April 8 and 9, 1978, from 7:00 a.m. to 3 a.m. for the Waterloo Music Festival, Women's Symphony League of Austin, Mrs. Reba Byrd, Chairperson:

1. Trinity Street from 12th to 15th Streets.
2. 13th Street from San Jacinto to Trinity Streets
3. 14th Street from San Jacinto to Trinity Streets

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

PARKING METER ZONES

Mayor Pro Tem Trevino moved that the Council adopt a resolution authorizing the following Parking Meter Zones:

<u>DELETE</u>	<u>METER ZONE</u>	<u>STREET</u>	<u>LOCATION</u>	<u>SIDE OF STREET</u>
	15/80	Lavaca	100 block	east
	30/60	Lavaca	200 block	east
	30/60	Lavaca	200 block	west
	30/60	West 2nd	200 block	north
	30/60	West 2nd	200 block	south
<u>ADD</u>	30/60/90/120	Sabine	1200 block	east and west

The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

SETTING A PUBLIC HEARING
TRANSIT SERVICE

Mayor Pro Tem Trevino moved that the Council set a public hearing on Proposed Transit Service Improvement for March 16, 1978, at 8:00 p.m. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

SETTING A PUBLIC HEARING
BRACKENRIDGE HOSPITAL

Mayor Pro Tem Trevino moved that the Council set a public hearing on Brackenridge Hospital for March 27, 1978, at 7:30 p.m. The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell, Mayor Pro Tem Trevino
Noes: None

AMENDING ORDINANCE
ZONING CASE NO. C14-77-049

Mayor McClellan introduced the following ordinance to correct an error in the legal description of property (Zoning Case No. C14-77-049) belonging to Hurschel B. Morgan of 6301 Manchaca Road:

AN ORDINANCE AMENDING ORDINANCE NO. 780209-G, ENACTED BY THE CITY COUNCIL ON FEBRUARY 9, 1978, BY CORRECTING AN ERROR IN THE LEGAL DESCRIPTION OF THE PROPERTY ZONED BY SAID ORDINANCE; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Himmelblau moved that the Council waive the requirement for three readings, declare an emergency, and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell,
Mayor Pro Tem Trevino, Mayor McClellan
Noes: None

The Mayor announced that the ordinance had been finally passed.

STASSNEY LANE

Mayor McClellan introduced the following ordinance:

AN ORDINANCE DECLARING THE NECESSITY FOR AND ORDERING THE PAVING AND IMPROVEMENT OF PORTIONS OF CERTAIN STREETS IN THE CITY OF AUSTIN, APPROVING PLANS AND SPECIFICATIONS FOR SUCH WORK, AUTHORIZING THE CITY MANAGER TO ADVERTISE FOR BIDS, DIRECTING THE PREPARATION OF ESTIMATES, INVOKING THE ALTERNATE PROCEDURE PROVIDED BY ARTICLE 1, SECTION 5 OF THE CHARTER OF THE CITY OF AUSTIN AND CHAPTER 106 OF THE ACTS OF THE FIRST CALLED SESSION OF THE 40TH LEGISLATURE OF TEXAS, DETERMINING THAT THE COST OF SUCH IMPROVEMENTS SHALL BE PAID BY THE CITY OF AUSTIN, PROVIDING A METHOD OF REIMBURSING THE CITY OF AUSTIN FOR A PORTION OF SUCH COSTS BY ASSESSMENT OF A PORTION OF SUCH COSTS AGAINST THE PROPERTY ABUTTING SUCH STREETS OR PORTIONS THEREOF TO BE IMPROVED, AND FOR THE FIXING OF A LIEN TO SECURE PAYMENT OF SUCH ASSESSMENTS, STATING THE TIME AND MANNER PROPOSED FOR PAYMENT OF ALL SUCH COSTS, DIRECTING THE CITY CLERK TO CAUSE A NOTICE OF THE ENACTMENT OF THIS ORDINANCE TO BE FILED IN THE MORTGAGE OR DEED OF TRUST RECORDS OF TRAVIS COUNTY, TEXAS, AND DECLARING AN EMERGENCY. (Stassney Lane)

Councilmember Himmelblau moved that the Council waive the requirement for three readings, declare an emergency and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell,
Mayor Pro Tem Trevino, Mayor McClellan
Noes: None

The Mayor announced that the ordinance had been finally passed.

BURLERSON ROAD

Mayor McClellan introduced the following ordinance:

AN ORDINANCE RECEIVING AND ACCEPTING THE WORK OF IMPROVING PORTIONS OF BURLERSON ROAD IN THE CITY OF AUSTIN, TEXAS, WITHIN THE LIMITS HEREINBELOW DEFINED, PERFORMED BY TERRY EDWARDS CONSTRUCTION COMPANY; AUTHORIZING AND DIRECTING THE ISSUANCE OF SPECIAL ASSESSMENT CERTIFICATES IN CONNECTION THEREWITH; DECLARING AN EMERGENCY; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS PASSAGE.

Councilmember Himmelblau moved that the Council waive the requirement for three readings, declare an emergency and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell
Mayor Pro Tem Trevino, Mayor McClellan
Noes: None

The Mayor announced that the ordinance had been finally passed.

ZONING ORDINANCE

Mayor McClellan introduced the following ordinance:

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 45 OF THE AUSTIN CITY CODE OF 1967 AS FOLLOWS:

A 12.78-ACRE TRACT OF LAND, LOCALLY KNOWN AS 5002-5010 EAST BEN WHITE BOULEVARD, FROM INTERIM "AA" RESIDENCE, INTERIM FIRST HEIGHT AND AREA DISTRICT TO "GR" GENERAL RETAIL, FIRST HEIGHT AND AREA DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE. (Like H. Dobbins, et al, C14-77-170)

Councilmember Himmelblau moved that the Council waive the requirement for three readings, declare an emergency and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Cooke, Goodman, Himmelblau, Mullen, Snell,
Mayor Pro Tem Trevino, Mayor McClellan
Noes: None

The Mayor announced that the ordinance had been finally passed.

CONTRACT APPROVAL

Councilmember Goodman moved that the Council adopt a resolution approving the following contract as outlined by the City Manager:

AKIN & BYRAM, INC.
150 East Riverside Drive
Suite 500
Austin, Texas

- CAPITAL IMPROVEMENT PROGRAM,
Tennis Court Improvements,
Caswell Tennis Center - \$107,234.20
CIP No. 78/86-03

The motion, seconded by Mayor McClellan, carried by the following vote:

Ayes: Councilmembers Goodman, Himmelblau, Mullen, Snell, Mayor
Pro Tem Trevino, Mayor McClellan, Councilmember Cooke
Noes: None

City Manager Dan Davidson addressed the concern that the 140 working days specified in the contract would interfere with Spring and Summer tennis programs. Mr. Davidson stated that Mr. Akin has given assurance that his company will cooperate with all concerned parties so that the project will have the least possible effect on the tennis program at Caswell. Mr. Davidson recommended expediting the installation of lighting at Austin High School to accommodate night time tennis play. He also recommended that the low bid made by Akin & Byram, Inc., be approved by the Council. Mr. Davidson felt that it would not be wise to postpone work until the Winter due to bad weather which could greatly extend the completion time for the project.

Mayor McClellan indicated that she was anxious to expedite the lighting at Austin High School. In regard to a question from Mr. Beau Byers, head of the Capitol Area Tennis Association, Mr. Davidson stated that expediting the lighting at Austin High School would mean installing the lighting system prior to contracting for the rest of the work. Mr. Davidson indicated that the time involved in the installation of the lighting has not been worked out but that it would be done as quickly as possible.

CHANGE ORDER

Councilmember Cooke moved that the Council adopt a resolution approving a Construction Change Order in the amount of \$74,846.59 to J. T. Waggoner Construction Company for additional sidewalks (Economic Development Administration - Local Public Works Sidewalk Program, Phase II). The motion, seconded by Councilmember Himmelblau, carried by the following vote:

Ayes: Councilmembers Himmelblau, Mullen, Snell, Mayor Pro Tem
Trevino, Mayor McClellan, Councilmembers Cooke, Goodman
Noes: None

Mr. Charles Graves, Director of the Engineering Department, stated that the money in this Capital Improvements Program, local public works sidewalk program Phase II, is being transferred from the money left in Phase I which has been completed. Councilmember Cooke asked if this money had been held in contingency and Mr. Graves replied that it had.

ELISABET NEY MUSEUM

The Council had before it for consideration an agreement between the City of Austin and the Texas Fine Arts Association for the Elisabet Ney Museum. Mayor McClellan asked for discussion on what sort of commitment the City is making for next year's Capital Improvements Program. She said she is very supportive of getting the museum in shape. Her understanding is that there is \$200,000.00 earmarked until this present year C.I.P. Program. "As we approve this, are we making a commitment on the \$200,000.00 for next year's Capital Improvements Program?" she asked. Mr. David Segrest, Acting Director of Parks and Recreation, answered, "Two C.I.P.'s previous to the current C.I.P. there were funds carried in unfunded years for the restoration of the Elisabet Ney Museum. Last year during the consideration of the C.I.P. those funds were not placed back in because of the question over the agreement of the operation of the museum and were held pending that decision. We will and do anticipate the funding for the restoration in the upcoming C.I.P. and will make every effort to get that into the upcoming year, but at this point this does not represent a commitment. It will be brought back to you in the C.I.P. to review." Councilmember Himmelblau said, "I'd like us to apply to the State Historical Survey Commission to see if there's some money." Mr. Segrest stated, "We do anticipate in the funding we're planning on programming for that, that we can get matching funding for the restoration. We're optimistic that that will be possible." The Mayor said, "I certainly concur on seeking any of that funding that would be available to us. I just wanted to make sure we weren't making commitments before we have our total picture of what the Capital Improvements Program is going to look like. We're looking towards a bond election. I think we're going to have to be very, very...look very closely at what we're doing. I think the content of the agreement looks pretty good. I just didn't want any misunderstanding about what we're doing."

Councilmember Himmelblau moved that the Council adopt a resolution authorizing an agreement between the City of Austin and the Texas Fine Arts Association for the Elisabet Ney Museum, with the understanding that Council will look at the dollar commitment, with Federal and State aid if possible. The motion, seconded by Councilmember Mullen, carried by the following vote:

Ayes: Councilmembers Mullen, Snell, Mayor Pro Tem Trevino,
Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau
Noes: None

CPR TRAINING PROPOSAL - POSTPONED

The CPR Training Proposal which is on the agenda under City Manager Reports is postponed until March 23, 1978.

MONTHLY FINANCIAL STATEMENT - JANUARY

Mr. Monty Nitcholas, Director of the Finance Department, presented to Council the unaudited monthly financial statement for the month of January, 1978. He reported that budgeted items are on schedule or better than estimated in almost every case. The financial report concerning Brackenridge Hospital is exceeding their estimates. The General Fund looks better than last year.

and the cash flow is good. Mr. Nitcholas pointed out that there are no critical areas in the January report. Councilmember Cooke asked if future reports on Brackenridge Hospital can show how expenditures correlate to the 1977 budget. Mr. Nitcholas reminded Councilmember Cooke that that information is contained in the highlights letter sent to Councilmembers. Councilmember Cooke also questioned the \$11 million plus budget on City sales tax, and wanted to know if there was any particular reason for it or if it is a cyclical trend. Mr. Nitcholas replied that he believed so. Council accepted the report given by Mr. Nitcholas.

"SUN DAY"

Councilmember Himmelblau moved that the Council approve the request of MR. JOSEPH J. HOLT for permission to use Zilker Park facilities for celebration of "Sun Day" May 3, 4, 5, 1978. The motion, seconded by Mayor McClellan, carried by the following vote:

Ayes: Councilmember Snell, Mayor Pro Tem Trevino, Mayor McClellan,
Councilmembers Cooke, Goodman, Himmelblau, Mullen
Noes: None

PARADE PERMITS

Councilmember Mullen moved that the Council approve the request for a Parade Permit from MR. ROY DALTON POOL, JR., for Austin Runners Club, Austin YMCA, Parks and Recreation Department, University of Texas, from 7:30 a.m. to 1:00 p.m., Saturday, April 8, 1978, beginning from Barton Springs Road, one lane traveling west, from Robert E. Lee Road to Park Road serving soccer fields (distance of 700 feet) and Stratford Drive, east under MOPAC overpass to Park Road exit. The motion, seconded by Mayor McClellan, carried by the following vote:

Ayes: Mayor Pro Tem Trevino, Mayor McClellan, Councilmembers
Cooke, Goodman, Himmelblau, Mullen, Snell
Noes: None

Mayor Pro Tem Trevino moved that the Council approve the request for a Parade Permit from Carolyn Bobo Stokes, for the Austin American-Statesman Austin Runners Club from 10:00 a.m. to 12:00 p.m., Sunday, March 12, 1978, to change the route to begin from Congress Avenue to East 1st Street, east on East 1st Street to Trinity, follow Town Lake Hike & Bike Trail to Zilker Park including a portion of Barton Springs Road (bridge), West Riverside from South 1st Street to Lamar. (Permit previously granted February 16, 1978) (Emergency item - Mayor McClellan and Mayor Pro Tem Trevino) The motion, seconded by Councilmember Goodman, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Goodman, Himmelblau, Mullen,
Mayor Pro Tem Trevino
Noes: None
Not in Council Chamber when roll was called: Councilmembers
Cooke, Snell

PUBLIC HEARING - ANNEXATION

Mayor McClellan opened the public hearing scheduled for 10:00 a.m. to consider annexation of and directing the administration to institute annexation proceedings to annex the following:

- a. 355.14 acres of land out of the James Coleman Survey No. 17 and No. 25 (Great Hills VII, Great Hills VIII, AISD School Tract, a portion of Loop 360 and unplatted land, Case No. C7a-77-014)
- b. 79.36 acres of land out of the Patterson Moore Survey and the A. Eanes Survey. (Woodhaven Subdivision, Eanes Independent School District Tract, and unplatted land, Case No. C7a-77-013)

Mayor Pro Tem Trevino stated, "As I think most of us know the Supreme Court of the United States issued a ruling this past week in regards to the authorization that the Justice Department now has in regard to annexation by any political entity. I have discussed very briefly with the City Attorney the impact that this may have in Austin, particularly with regard to any annexation. The City Attorney seems to feel comfortable that the City has complied with the requirements under the Voters Rights Act. However, I don't feel quite as comfortable as the City Attorney. In the past we know that Justice has called some of us in this Council to assure that there's no hanky-panky in terms of annexation. But I'm also mindful that at that time Justice did not have any jurisdiction. The Supreme Court has, it is my understanding, in the past."

City Attorney Harris said, "That's not correct, Councilman. Justice has always had jurisdiction and the City of Austin has always recognized their jurisdiction. It was a town in Alabama who thought that maybe Justice did not have jurisdiction and had contested the applicability of the Voting Rights Act of 1965 to municipalities. But thousands and thousands of other municipalities in this country have never questioned the applicability of the 1965 Civil Rights Act to them and therefore, have complied with it and their submissions of annexations and all other things that might have effected the voting in the communities to the Justice Department. The City of Austin itself has made four previous submissions to the Attorney General who assumed the jurisdiction and who has reviewed those matters and has written back that they did not have any objection to that. I might add one thing here. Of course, we will come back with a full report of that particular decision to the City Council. My only concern here is that because of the State statute as far as the timing and notification on these annexation cases, that if you throw these things to some other date, we are likely to have to start over again. I would offer this one suggestion that we proceed with the public hearing and if the City Council decides to institute the annexation proceedings, the ordinances would not come back to the Council for two weeks. In the meantime we could have some further discussion about this particular decision and if at that time the City Council did not care to proceed with the annexations, they would not be under any necessity to pass these particular ordinances."

"Apparently, Mr. Harris," continued Mayor Pro Tem Trevino, "this issue has not been so clear cut in that Sheffield, Alabama, took it up to the Supreme Court. I'm advised by other members of the legal profession that this may have some impact and what I would ask you is whether you have had opportunity to thoroughly review the Supreme Court ruling, or are we just shooting from the hip?"

Mr. Harris replied, "Of course, Councilman, I'm not shooting from the hip and as I have advised you a couple of times, I've not read that decision and that I would not advise this Council to do anything that would in any way get the Council too far down the road where they could not readily decide not to annex this territory to the City of Austin. And that was my only suggestion, as to possibly proceeding and still not annex this territory since the ordinances did not have to come back for two weeks. And we have to go through at least one reading, maybe three readings. I certainly have no objection to not proceeding with them. I have no legal objections or otherwise to not proceeding and postponing these until we look at the Sheffield, Alabama, case and let the Council decide how they want to proceed." Mayor Pro Tem Trevino said he was not suggesting Council postpone the hearing, but was just asking that Council not take any action. He said he thought Council needs to be aware of all of the ramifications that are involved with this ruling. We are talking about, from a layman's viewpoint, from what I understand about the ruling is that Justice now has, without any question, jurisdiction in terms of authorizing or at least "busting up" annexations. "We see that we have over 400 acres that were to be considered," continued Mayor Pro Tem Trevino, "we're talking about just acreage and with the projections given to us by Planning, we're talking about somewhere in the neighborhood of 1800 people. I would ask, in fact I'm making it a formal request, that we be given the annexations that have taken place since 1972, November the first, 1972. The annexations that have taken place ~~geographically~~, in terms of acreage. I want to know the population that has been absorbed into the City, and I also want to know the racial make-up of that population. That is to say, how many whites, how many blacks, how many browns...just as far as we can determine."

City Manager Davidson said he does not know how we can tell that. Councilmember Trevino commented, "Well some way in the form of a census. I also want to know, again in the form of a formal request, the projection. What does the City intend to annex in the next two to five years? What is the geographical location, and based on the best information we have, what type of housing will be constructed in those areas...will it be a house that can be afforded by low income, middle income families, or will it be the type of housing that can only be afforded by those of high income?"

Councilmember Mullen asked how this can be determined when the private sector is going to build the houses. Councilmember Trevino answered that it will be easy because the City has very capable people who can determine what type of individuals can afford a house in northwest Austin. Councilmember Mullen still questioned how staff can determine what industry will do, in any part of town...northeast...south...and wondered how they can comply with Mr. Trevino's request. Mayor Pro Tem Trevino answered that the information does not have to be definitive, but as best as can be estimated. "We know," he said, "that certain subdivisions are going up in certain parts of town. It's very well known in the newspapers, he said, that in a certain subdivision we have houses that range from \$30,000 to \$75,000." "That," he said, "is what we want to know."

Mayor McClellan said, "We not only acted as if the Justice Department had jurisdiction, we have acknowledged the Justice Department's jurisdiction. In that respect the Supreme Court just confirms what we have already been acknowledging as to be distinguished from those who took that suit. Is that

correct, Mr. City Attorney?" "Basically, Mayor," answered Mr. Harris. "I believe that as far as part of the information you have requested, Councilman Trevino, that's exactly the information we send to the Justice Department on each annexation. We send the population of the City of Austin prior to the annexation, what the ethnic make-up of that population was, and what happened afterward, and also how it effects the voting age population of Austin." Councilmember Trevino asked how many annexations the City has had since May 15, 1975. Mr. Harris answered that the information is in his files. Mr. Trevino asked how many people have been absorbed by that annexation. Mr. Harris said that information is in writing in his files. Mr. Trevino said that piece-meal annexation doesn't amount to anything but when larger annexations occur, more people are involved. Councilmember Goodman said that over the long term there is a systematic dilution of the minority vote. Mr. Harris replied, "Several references have been made to talking with other lawyers, and none of these things in themselves mean anything about the at-large system of the City of Austin. All these things have to be judged about what their impact is on what kind of participation the minorities have in this particular system. And all I'm saying is..." Councilmember Cooke interjected, "We're not addressing people that might move into the City limits...what their ethnic break-down might be. If we're annexing into the City and it has a certain ethnic break-down, but we're only looking every 10 years at the people in the City and what their ethnic break-down may be, it might definitely influence what the Pro Tem is getting at. The implication here is that we're going to annex and dilute the minority population when you might have a pretty significant minority population moving into the City. In fact, trends indicate that the Mexican-American population is increasing significantly into our City and will continue to do so in the future. Let's look at both sides of the coin." Councilmember Trevino reiterated that the public hearing should be conducted but no action taken. Mayor McClellan said, "All that information is available, Mr. Harris said he has been sending it to the Justice Department. I would assume, Mr. City Attorney, that you can furnish Council with all of the information requested. I do think though, we have gotten into quite a discussion on this and if we carry this on to conclusion you have to look not only at the annexed areas and what their ethnic break-down is, but also how they are participating in the system. And that is where you get into some more determination as to what is spoken to in the Supreme Court ruling. You have to look at not what is only is happening with annexed areas, but is there more or less participation after that happens on the part of minorities that are in the City limits, including the annexed areas."

Mr. Davidson asked, "You said you'd like to see some kind of a projection of future annexations. What's your time-table? We have underway at this time a study on future annexation proposals but it does not cover the time-table that you are talking about." Mr. Lillie, Planning Director, told Council that study is scheduled to be to them by June 1. He said ~~that~~ they have raw data ~~which~~ ~~is~~ being assembled but they haven't gotten to the point where they can give information on the 37 or so sub-areas, as yet. Mr. Lillie said they have information from 1972 to the present, and will do the projections for the next five years as best as they can. Mr. Davidson asked Mayor Pro Tem Trevino, again, how soon he wants the report. He said he would not know, until he confers with Mr. Lillie how soon the report can be compiled. Mr. Trevino asked if there was information in order to compile the report in two weeks. Mr. Davidson said, "No." Councilmember Himmelblau queried if this would hold up major annexations which would effect the City's tax base. Mr. Davidson replied that would depend on the time-table and what the Mayor Pro Tem intends to do with it once it is

received. Assuming, he said, that you are talking about a holding pattern over a period of months, the answer is possibly yes. Councilmember Himmelblau said, "I think that's very dangerous because by good annexation and good planning, that's the only way we've been able to keep up with the percentage that we have on the tax rolls now." Councilmember Goodman commented, "I would venture to say that the impact of postponing this would be infinitesimally small. I don't see how this would in any way have any impact on the amount of taxes we are collecting to postpone these two annexations. Mayor McClellan repeated what the City Attorney had said about having a public hearing and having to wait at least two weeks before ordinances go into effect. She said Council should proceed with the public hearing because she thinks the City has been following everything that's been set forth and have continually acknowledged the Justice Department's jurisdiction in these matters. She said she does not think it will in any way change our procedure any, and concurs Council should be furnished the information Mr. Trevino has requested. That is available, the Mayor continued, because Mr. Harris has been sending in reports to the Justice Department. There should be no reason for delaying the bringing back of the ordinances because two weeks will give them plenty of time to look at all the information requested.

Mayor Pro Tem Trevino addressed Council by saying, "In all fairness to Council, until that information is received, at least on my part, I am going to be very reluctant to approve any kind of annexation and I would urge other members of the Council to do likewise. I agree with Betty, the postponement of any kind of annexation, and I have always agreed that annexation is a tool to maintain controlled growth, but because of the ruling, at least it is clear in our mind that Justice Department does have that question and jurisdiction. We should make certain that the rights of certain people are not diluted." Councilmember Goodman said he too would be reluctant to vote because the Supreme Court ruling is a new development. The Mayor said, "That's not a new development to us though, we have been adhering to that, so I disagree with you... I think you will find that minority participation has increased, not diminished so I have no fear of putting all that information in a report. I think you'll find we have been doing precisely what we ought to be doing." In answer to Mayor Pro Tem Trevino's remarks about it taking a long time to get Mexican-American representation on the Council, the Mayor said it took women a long time too. Councilmember Snell said that he thinks Mayor Pro Tem Trevino is right because each time there is an annexation, Councilmembers get a call from the Justice Department asking its effect.

Council proceeded with the public hearing. Mr. Lillie, Director of Planning reported that the annexation of 355 acres of land was a request by Great Hills and included are plans to build some 400 units by 1984. The remainder of the non-residential for shops, hotel, offices, a school site and potential church locations, includes a right of way of Loop 360, as it extends southward from Jollyville Road toward Lake Austin. All of the area on the east side of Loop 360 and all of the area on the north of Jollyville Road is already in the corporate limits. This area is adjacent to the City and the utility departments have responded favorably to this annexation. He said Council has a fiscal note from the Budget and Research Office. The second annexation (79 acres) is southwest of the community, adjacent to the City limits. It is the Woodhaven Subdivision. This area has potential for some 177 units which are intended to be built by 1981. The City departments have responded. The Fire Department has indicated that service to this area will not be adequate over the next several years. All other departments have responded favorably to this

annexation. Fiscal note is prepared for this annexation, too. Mr. Lillie told Council that the Planning Commission has reviewed both annexations and are recommending them.

MR. WOODROW SLEDGE, representing the Austin Independent School District, appeared before Council to speak for the annexation. "For the past nine years," he said, "I have consistently supported, for the school district, annexation of areas in which school sites were located, for the obvious reasons... zoning protection, all sorts of controls... I am here today to join with the other owners and developers to go ahead with this annexation as recommended by your staff. I have been in the thick of all the developmental fights in the past several years. The School District is interested, as is the City, in the development of the tax base. This area includes a proposed large shopping center. The school district is also interested in any type of development which would more or less slow down white flight. Unfortunately, the efforts of minority leaders in the past six years, though well intended, have served anywhere in any way that they discourage development within the school district. They have encouraged the leaving of the school district by the white population. It has been so obvious that I have often wondered if this was not the clear intent. Personally, I think most of us would like to leave the percentages as they are. No one has seemed to worry about development southeast or the unfortunate poverty-breeding factors of inordinately large families, although we have encouraged family planning. We would like to leave it as it is. If you discourage development within the school district, you are obviously playing into the hands of white flight. And I throw this right at you, whether in the southwest or the northwest. This has been the effect of artificially trying to control where people live and in what developments emerge. Part of this is my opinion and part of this is from long observation here at this Council Chamber."

BILL COTTEN, developer of Great Hills, appeared before Council to state that they have worked with Planning and with Council. This area, he said, is predominantly commercial. It will increase the tax base considerably. He said there is some residential at this time, but they have large commercial areas that will be coming on line. He thinks it would be very detrimental to the project and to the area of town if there is a postponement at this time as there are a lot of utilities going in now, and they need this to be annexed as soon as possible.

BILL GANN, owner of the subdivision known as Woodhaven, said they requested the annexation because through their conversation with City Planning and other members of the staff, they have been told that bedroom communities are not necessarily desired by the City of Austin and that is the sole reason they requested annexation. The people living in the subdivision will undoubtedly be using Austin's libraries and hospitals, and he said he thought they should be paying taxes.

Councilmember Mullen said Council should ask these developers right now how many of their houses will be sold to Mexican-Americans or Blacks because that is the information Mayor Pro Tem Trevino is asking for. Mayor Pro Tem Trevino said, "I can assure you that if you build a subdivision of 500 homes, you are not going to have 90% Mexican-Americans out there." Councilmember Mullen answered, "Let's ask these developers if they are in any way going to exclude any ethnic group whatsoever, or are they going to encourage ethnic groups to come in." Councilmember Snell said you can get an idea of how many Blacks or Browns will live in an area by the price range."

Mr. Davidson said, "I'd like to make one thing clear. We keep talking about the need to project the ethnic make-up of these proposed new subdivisions, and I want to explain what we are going to be able to come back with and that is a reflection of what already exists today in the census tracts into which these developments will be constructed. We will not be able to actually make projections with any accuracy whatever as to what is likely to occur within those subdivisions." Mayor Pro Tem Trevino said, "We know the migration patterns of minorities. We know the Blacks are going north, northeast. We know that the Chicanos are going south central. You do have some very successful Blacks and Browns and others. Those are in the minority. We are talking about the significant impact... We can see in which direction the minority groups are beginning to expand, and with that projection, Mr. Lillie, to the best of his professional ability, can let us know."

Mr. Davidson answered, "Apparently you know what's possible, but there are some people in the Council Chambers listening to this meeting who may misunderstand what kind of a job we're going to be able to do in order to project minorities and I want to make it clear that we cannot actually make a projection. We can extend what exists in the census tracts, and we'll do that."

Councilmember Mullen wondered, "what the point of this is if the Blacks and Browns choose to not live in this annexed area. If we are only going to annex areas that have a high tax base, then you are certainly not going to annex an area that has \$20,000 homes in it, because their tax base is a whole lot less for the facilities provided. So your premise is going to be that we are not going to annex anybody if you are going to carry it out to the ultimate." Councilmember Cooke commented that annexation Council approved last week was a very positive development to the southeast with the approval of Data General.

After further discussion between the Mayor and members of the Council, the following motions were made.

Motion

Councilmember Himmelblau moved that the Council close the public hearing, and proceed with the annexations by instructing the City Attorney to return in two weeks with the proper ordinances.

Substitute Motion

Mayor Pro Tem Trevino made a substitute motion to close the public hearing and delay any action on the annexation for two weeks.

City Attorney Harris told Council that if they close the public hearing today, they have not less than 10 nor more than 20 days to pass ordinances on the first reading, otherwise they will have to start the whole annexation procedure over again. He told Council that they can vote to continue the public hearing.

Substitute Motion Amended

Mayor Pro Tem Trevino amended his substitute motion to continue the public hearing to March 23, 1978, at 10:30 a.m. Councilmember Goodman seconded the amended substitute motion.

Roll Call on Substitute Motion Amended - Failed

Ayes: Mayor Pro Tem Trevino, Councilmembers Goodman, Snell
Noes: Councilmembers Himmelblau, Mullen, Mayor McClellan,
Councilmember Cooke

Roll Call on Original Motion

Ayes: Councilmembers Cooke, Himmelblau, Mullen, Mayor McClellan
Noes: Councilmembers Goodman, Snell, Mayor Pro Tem Trevino

The Mayor announced that the original motion had passed.

Mayor Pro Tem Trevino asked City Attorney Harris, "As soon as this becomes an ordinance, this is automatically forwarded to the Justice Department, is this correct?" Mr. Harris answered, "The policy in the past has been to accumulate a few annexations until such time as we're getting ready for another election and then submit a package to the Justice Department. I have in preparing this latest summation determined, if we can, to forward each one after it's passed, to the Justice Department...maybe that's what we ought to do. That's what I anticipate doing. The main reason is it saves building up such a large submission each time. It's a lot of paper work and if we could do it as each one goes on it would, I think, be easier to handle. I would anticipate that under that policy, if this one ever passes, would be the first one we sent up as an individual matter."

PUBLIC HEARING - VACATING ALLEYS AND STREETS

Mayor McClellan opened the 10:30 a.m. public hearing on vacating the following and passage of ordinances. Mr. John German, Director of Public Works, described the property in question and stated that in each case the City will be vacating right of way no longer needed for streets. He said the Planning Commission recommended the vacations. No one appeared to be heard, and the following motions were made:

Mayor McClellan introduced the following ordinance:

AN ORDINANCE VACATING AND PERPETUALLY CLOSING THAT CERTAIN PORTION OF SPICEWOOD SPRINGS ROAD, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF AN ORDINANCE ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Goodman moved that the Council close the public hearing, waive the requirement for three readings, declare an emergency and finally pass the ordinance. The motion, seconded by Councilmember Cooke, carried by the following vote:

Ayes: Councilmembers Himmelblau, Mullen, Snell, Mayor Pro Tem
Trevino, Mayor McClellan, Councilmembers Cooke, Goodman
Noes: None

The Mayor announced that the ordinance had been finally passed.

Mayor McClellan introduced the following ordinance:

AN ORDINANCE VACATING AND PERPETUALLY CLOSING THAT CERTAIN PORTION OF AN ALLEY WHICH TRAVERSES GUERRERO PARK, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF AN ORDINANCE ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Goodman moved that the Council close the public hearing, waive the requirement for three readings, declare an emergency, and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Mullen, Snell, Mayor Pro Tem Trevino, Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau

Noes: None

The Mayor announced that the ordinance had been finally passed.

Mayor McClellan introduced the following ordinance:

AN ORDINANCE VACATING AND PERPETUALLY CLOSING THAT CERTAIN PORTION OF GREAT HILLS TRAIL, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF AN ORDINANCE ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Goodman moved that the Council close the public hearing, waive the requirement for three readings, declare an emergency, and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Mullen, Snell, Mayor Pro Tem Trevino, Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau

Noes: None

The Mayor announced that the ordinance had been finally passed.

Mayor McClellan introduced the following ordinance:

AN ORDINANCE VACATING AND PERPETUALLY CLOSING THAT CERTAIN PORTION OF AN UNNAMED STREET OUT OF DOVE SPRINGS, PHASE 3 AND DOVE SPRINGS SECTION TWO, PHASES 1 AND 2, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF AN ORDINANCE ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Goodman moved that the Council close the public hearing, waive the requirement for three readings, declare an emergency, and finally pass the ordinance. The motion, seconded by Councilmember Snell, carried by the following vote:

Ayes: Councilmembers Mullen, Snell, Mayor Pro Tem Trevino, Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau

Noes: None

The Mayor announced that the ordinance had been finally passed.

AGENDA ITEM WITHDRAWN

The report scheduled to be presented by the Urban Transportation Commission concerning the MoPac Ramp Design Clarksville Community Study, was not given, and the item was withdrawn from the Agenda.

CITY MEDALLIONS TO MARK HISTORIC STRUCTURES

MR. PHILIP CREER, representing the Historic Landmark Commission, presented proposed medallions to the City Council. These medallions, which in essence, were a reproduction of the City Seal, were produced on masonite at a cost of \$3.50 for the small size and \$4.00 for the larger size. They could be produced on metal at a cost of \$11.00 for the small size and \$12.50 for the larger. These medallions, designating an historic structure, would be placed on buildings with the approval of the owner of same. Mayor McClellan asked why a bronze medallion was not used, and Mr. Creer said he felt the red, white and blue ones would be more visible. Councilmembers Mullen, Goodman and Cooke all thought the medallions, as proposed, looked too commercial and gaudy. The Mayor suggested that the Historic Landmark Commission work up another design, perhaps in bronze. Mr. Creer informed Council he would return at a later date with another design. Mr. Dan Davidson, City Manager, told Mr. Creer that the City staff would work with him.

RECESS

Mayor McClellan recessed the Council meeting at 11:10 a.m. and they resumed the meeting at 2:00 p.m. Councilmembers Himmelblau and Mayor Pro Tem Trevino were absent during the afternoon.

PUBLIC HEARING - WEST 8TH STREET CLOSING

Mayor McClellan opened the public hearing, continued from February 16, 1978, on closing West 8th Street from Guadalupe to San Antonio, at 2:00 p.m.

FRANK McBEE, appeared before Council to say that the current traffic on 8th Street and San Antonio is very dangerous and the closing of 8th Street would eliminate a lot of the problem. He feels that a mall in that area would be attractive and functional and urges the closing of the 8th Street area from Guadalupe to San Antonio.

MRS. ERNEST WALKER, Austin Women's Club, urged Council to consider the temporary blocking of the streets before a permanent measure is taken by the building of a mall, in order to observe the traffic flow.

ALEX McDOUGAL, Austin Savings and Loan Association, also urged a temporary closing in order to observe the results. He said that if 8th Street is closed, the Bremond Block Alley will probably be used as an alternate to that street.

JIM PYLE, who works for Lamar Savings and Loan, feels that the mall would enhance pedestrian appeal, however, the closing of the street would make it more difficult to reach the library and there would be fewer parking places. He felt that the parking problem should be solved before the street is closed.

SAM HOUSTON CLINTON, who lives at 700 San Antonio, told Council he is in favor of the mall. He said people like to walk around the Bremond Block and Wooldridge Park. The addition of a mall on 8th Street would support this atmosphere.

RAY SHORTER, who works for Lamar Savings, asked if private industry could build a 4-story building and not provide parking as the library is doing. He thinks there are enough park areas in Austin and we do not need to close 8th Street. His solution would be to provide diagonal parking on 8th Street and reduce traffic to two lanes.

Mayor McClellan asked how many parking spaces were available with the old library design as opposed to the number available with the new design. Mr. Ternus, Director of Urban Transportation, said the old design provided 15-20 spaces, and the new will provide 60-70. The area will be between the old and new buildings.

JAMES M. ROSE, a concerned citizen and former director of planning for the state, who is now a private consultant, appeared before Council. He said he has researched the proposed mall and has found:

1. No delineation of parking facilities for library patrons and therefore, there will be a greater parking problem in the future.
2. All public buildings should have free traffic flow. The closing of a thoroughfare would cause problems for the traffic plan.
3. The proposed mall could be counter productive to the downtown restoration project. \$150,000 for a park which would restrict the use of financial institutions nearby could backfire.

Mr. Rose's recommendation is to get the buildings being built and proposed to be built in the area in place before any final action is taken regarding the closing of 8th Street.

MR. TOM CURTIS, representing Capital National Bank, thinks the area should be barricaded after Capital National Bank builds on a nearby site so that traffic flow can be studied. He reminded Council that once a park is built, it takes an election to undo it.

MR. FRED SACKETT, 1402 Windsor Road, Chairman of the Austin Library Commission, stated that the Commission is in favor of the closing of 8th Street. He said the amount of parking provided for the new building meets all of the City's ordinances for same, and that a downtown library is dependent on pedestrian traffic. He said they have studied this for 3 years and Mr. Ternus can predict what the traffic flow will be.

PHILIP CREEK, Chairman of the Landmark Commission, addressed Council and told them the Commission is in favor of the green space between the library and the Bremond Block. He urged Council to approve the mall as he thinks it will be an asset for Austin.

BILL MOORE, Chairman of the Urban Transportation Commission, told Council the Commission had a unanimous vote for the closing of 8th Street and the building of a mall. He said:

1. 8th Street is not a major artery, but is a service street. It should be closed temporarily until the mall is built.
2. 8th Street and San Antonio and Guadalupe traffic problems would be solved by closing this area.

Motion

Councilmember Goodman moved that the Council close the public hearing and postpone vote on whether or not to close West 8th Street from Guadalupe to San Antonio ~~until~~ March 23, 1978. The motion, seconded by Councilmember Cooke, carried by the following vote:

Ayes: Councilmember Snell, Mayor McClellan, Councilmembers Cooke, Goodman, Mullen

Noes: None

Absent: Mayor Pro Tem Trevino, Councilmember Himmelblau

Councilmember Goodman, at the time of his motion, stated he wanted to go on record as being in favor of this street closing.

Pat. 4/22/78

RECONSIDERATION OF THE PASS THROUGH ~~PROVISIONS~~ OF THE LOVACA SETTLEMENT AS THEY RELATE TO SOUTHERN UNION GAS COMPANY
(verbatim)

MR. BOB LAMKO, District Vice-President of Southern Union Gas Company in Austin, introduced MR. DAN CROWLEY, Executive Vice-President of Southern Union Gas Company.

CROWLEY: "Mr. Mayor and members of the City Council, I'd also like to add that with us today is MR. A. S. GRENIER, Vice-President and General Counsel of the Company. I want to thank the Council for allowing us to appear today on the Agenda. I would hope that the Council would listen to my comments, I have about 8 or 10 minutes, I would say, of comments. I would hope that the Councilmembers would listen to me with an open mind."

"We're here today to ask the Council to reconsider its resolution of last June 23rd and of last Thursday, March 2nd, regarding Southern Union's authorization by the City Council to execute the agreement ~~of parties~~ of parties agreeing to the form of settlement agreement regarding the LoVaca-Coastal situation. I realize that the Austin City Council has an awesome responsibility to the citizens of Austin and, of course, to the employees of the City of Austin. You also have that same responsibility to Southern Union Gas Company, a franchise holder whom you regulate. And by the same token, Southern Union also has responsibilities to its Austin customers, to its employees and to its stock holders. Mr. Don Butler, Counsel for the City, made available to us a draft copy of the resolution passed by this Council last Thursday, March 2nd. And from reading it, it appears that the City Manager cannot execute the agreement of parties on the behalf of the City unless he has, among other things, certain written assurances from Southern Union Gas Company. However, at this

March 9, 1978

time, Southern Union is not in the position to give the City Manager these written assurances. I believe you're fully aware that the items in question is approximately \$2.3 million. This represents dollars that were paid to LoVaca-Coastal by Southern Union for gas that was purchased for and delivered to our Austin customers, for which Southern Union has not been able to pass on through our cost of gas adjustment clause nor has Southern Union been reimbursed in any other manner for this \$2.3 million. In fact those of you that might be accountants, this is carried on our company's balance sheet as a deferred asset, in effect a deferred accounts receivable, waiting to be collected. I think we need just a brief background on the purchase gas adjustment clause and how it came about."

"Southern Union Gas Company has had a purchase gas adjustment clause in Austin since May of 1971. And the reason for it was we had completed a rate case, the City had made a decision, the gas company was not pleased and we appealed to the Railroad Commission and the Railroad Commission came out with the final order in the case. The City of Austin, at that time, was not pleased with the Railroad Commission's decision, and was talking about appealing it through the courts. We were able to meet on common grounds with the Council, and it was agreed at that time that a moratorium would be put into effect, May 12, 1971, wherein Southern Union Gas Company would not apply for a rate increase for a three-year period if the City did not appeal to the courts. This was acceptable; however, at that time we were operating under our old contract with LoVaca Gathering Company and in this three-year period we did have some contract increases. Now at that time, we were looking at 1 or 2 cent per MCF increases every 2 or 3 years, I forget the details. And rather than have to come back to the City Council for that 1 cent at the appropriate time, it was agreed to put in a purchase gas adjustment clause. And the intent was at that time, and still is to my knowledge, that the City and Southern Union would be kept whole on purchase gas adjustment increases. The resolution passed by this Council last Thursday provides that Southern Union is authorized to execute the agreement of parties only if it gives it's written assurance that it will pass on to the ratepayers in the Austin district, all of the benefits realized from the settlement. Now believe, we're eager to pass on any benefits we can to our Austin ratepayers, but only after Southern Union has been reimbursed for the \$2.3 million. The settlement plan itself as it stands now, to my understanding, provides that each resale customer of LoVaca, and of course Southern Union is in that classification, which is not flowed through to its customers all increases in gas costs, resulting from the interlocutory order of the Railroad Commission of September 27, 1973, will be entitled, unless it shall have agreed otherwise, to make itself whole from receipts out of the settlement trusts for all losses it may have sustained because of it less than complete flow through in prior periods, passing on to its customers, only the additional benefits from the settlement trust. And I might add that Southern Union was authorized by the Austin City Council at the time to comply with the Railroad Commission's interlocutory order of September 27, 1973."

"Now, if Southern Union is not allowed to make itself whole for all of these losses it may have sustained, it is my opinion it can only be considered rank discrimination, as I know of no other party to this settlement that is being restricted in this manner. And I cannot understand why Southern Union has been singled-out for this discrimination. We have sought diligently for authorization to recover the \$2.3 million in rate applications through a surcharge. This was disapproved by the City Council and by the Railroad Commission. We are pursuing it further through the courts and filed an appeal in 53rd

District Court in Austin on July 15, 1976, almost two years ago. I think probably the most important consideration is the impact and the burden on our Austin customers if collection is eventually effected through the courts. In addition to the principle amount, we would also be able to collect for interests and attorney's fees. And even standing alone, the interests on this \$2.3 million would be staggering and we would ultimately be looking probably at something over \$3 million, rather than the \$2.3 million. This accumulated, this 2.3, during 1974. As an aside I might add that in 1974 Southern Union did some financing, in fact we borrowed \$30 million at a rate of 80-1/2%. Money was not cheap at that time! So we effect this through the courts, we would have to recover it through a surcharge on the customer's bill and of course, that would be an addition to the rates the customers are paying at that particular time. On the other hand, to considerably ease the burden on the Austin customer, if we can be authorized to a settlement agreement without restriction, no additional charges will be made to our Austin customers other than the rates that are in effect from time to time. And further, they can look for reductions in the rates they otherwise would be paying from time to time, as such reductions are made possible through our receipts from the settlement trust fund."

"Now, in my letter to the City Council, I pointed out three things that we would do if the Council withdraws the requirement that we agree to pass through to our customers without reduction all receipts from the settlement trust, we will agree to look solely to the settlement trust for the recoupment of our previous, unrecovered \$2.3 million increased gas purchase costs. We will further agree to flow through to our customers all receipts from settlement trusts in excess of that amount, with nothing added for interests or attorney's fees, and we will agree that no part of this \$2.3 million, regardless of whether or not it's been collected in full, shall ever be included in the Austin rate base in any rate proceeding either before the City Council or the Railroad Commission. And, as soon as the LoVaca settlement plan become effective to the point where the settlement trust is actually created, we will dismiss our appeal which is currently pending in the 53rd District Court. And I would assume that if we do that the City would then be prepared to dismiss its cross-appeal in the same court."

"That's our side of the story and I respectfully request that this Council adopt a resolution today, granting Southern Union the right to execute the settlement agreement without restriction."

MAYOR McCLELLAN: "Mr. Crowley, something that has been referenced, and I believe you said and I know I've seen it in print and all, is that we would and you know we would have Southern Union sign before we signed in the settlement agreement. Now that has been repeatedly mentioned and I never remember any discussion, in either executive session, privately or publicly, relating to any such discussion. We have very consistently and continually, since last June, this Council's on record 7-0 in favor of settlement with our conditions as was spelled in that resolution that was adopted publicly last June with the pass through benefits to our Austin ratepayers. I think that...my feeling is that we've been very consistent, we should remain right where we are which is certainly approving the settlement but acquire improvement and part of that is conditional and our situation, upon that pass through of benefits to the Austin ratepayer. Your asking the Council, I believe your asking the Council to do something that the Railroad Commission has denied. We have agreed, as is stated in this resolution and the most resolution and as we have, I think, continually stated, to assure that this is without prejudice to pursue in litigation of the

\$2.3 million that you referenced and the right to pursue that claim for gas costs unrecovered, in litigation. But I believe that our position has been consistent and should remain so as far as where we are in the settlement."

CROWLEY: "Ms. Mayor, in answer to the first part of your comments, in reading the resolution, as I said the draft copy provided as by Mr. Butler, be it resolved by the City Council of the City of Austin, that the City Manager is hereby authorized, upon satisfaction of certain assurances, to effectuate the intent of the Council resolution of June 23 to execute for and in behalf of the City of Austin, so forth and so on. In the next paragraph, Southern Union Gas Company is further authorized to execute such settlement and reorganization plan subject, however, to its written assurances, so forth and so on. And I assume from that, that our assurances are going to be required before the City Manager can execute for the City."

MAYOR: "I think that's an incorrect assumption and I'd let Mr. Butler speak to that if you would please because I think that you're mixing two different things there. Some of those assurances we were referencing there were things like we want to be sure and name the director for Austin on any newly formed company, there were some details that we wanted...talk on our discussion on the settlement trustees. I don't think that our signing was conditional at all upon Southern Union's signing."

CROWLEY: "I don't think it should be."

MAYOR: "Well, it never has been our intent for it to be and that's why I wanted to clear that matter up and...Don, you might come up and speak to that and see if I interpreted that correctly."

DON BUTLER: "Certainly, that was the intent and hopefully the way it was drafted. I believe that it's rather clear on the fact that, first of all, the Council is approving the settlement agreement upon receiving certain assurances, and secondly, that Southern Union was to be authorized to execute agreement upon giving their written assurance that there would be a pass through. While I'm up here, would you like for me to cover any part of this? There's not a great deal of additional...I think as far as the basic facts are concerned that Mr. Crowley and I are not too far apart, but, of course, the whole tortured history of this case goes over about some 6 years. We do have considerable difference of opinion, I think, not only on rate-making issues but on legal issues, and if I could just amplify a bit. First of all, on the legal issues it's been my experience that it's never been too successful to resolve legal issues in the Council Chambers, and I think that this really comes down to a policy question actually of whether the Council is going to approve this pass through or not. This was a result of an agreement with Southern Union, as Mr. Crowley mentioned. Southern Union then came to the Council and asked to be allowed to increase its rates and change the Ordinance which it had drafted and which it had proposed to the City Council and that, basically, is the cause for this whole \$2.3 million dispute which we have at this time. Some of this short fall did come about after the Council had acted and it went to the Railroad Commission but the basic heart of the problem is Southern Union's own Ordinance of which it presented as a matter of agreement to the Council at the time the 1971 rate case was approved. Also, I might mention this, the time of the Railroad Commission decision in 1975, there were two parts to that case. One part as far as the overall rate was concerned, the second part, the \$2.3 million which we're still talking about

here. And the Railroad Commission was quite favorable to the company on one hand in giving them the rates which they desired but on the other hand, unfavorable to the company in disallowing the pass through of this \$2.3 million. So one can look at that decision as though it was something of a compromise or at least in my opinion it was. I think the bottom short of it without trying to read too much into anything, is this: The Council certainly has within its prerogative to decide that the company can pass this on. I think the pertinent facts are that the company had to agree at one time to a particular form of an Ordinance which did cause them a shortfall. They were before the City Council, the City Manager and the City Attorney will probably remember at least the two and perhaps three times City Councils turned them down. They went to the Railroad Commission and the Railroad Commission turned them down. And here we are at this stage here, almost six years later on this issue. Also, I think it's certainly been no secret as far as our position was concerned. On the night of June 23, when we passed the conditional resolution, it was made rather clear and it has been made clear throughout these negotiations as to where Austin was coming from on this particular issue, and I think, Mr. Grenier has had a copy of that since early on in this whole thing and certainly it has been my understanding throughout that there would be no problem with this so long as there was no prejudice to Southern Union's law suit. And that, of course, is still the position that the Council resolution is in. I would point this out as far as the discriminatory aspects. The initial Railroad Commission final order in this case did provide for a full and complete pass through of the benefits to ratepayers. I would suspect that that issue is not dead at this time because even though Lone Star has not been able to pass through all of its costs from the LoVaca case and is attempting to recoup from this settlement trust certain of those funds, the cities of Dallas, Irving, Waco and perhaps others have intervened at the Railroad Commission to raise this very issue about the pass through to customers. So it could be that Austin is not the only one seeking this particular treatment for its ratepayers. It just so happens that because of our particular position as an electric generator, we're having to sign on and Irving, Dallas, Fort Worth and Dallas and Waco are not at this stage. They may be raising the same point at the Commission. But I would say this that I think you ought to get full and complete consideration to the company's position, notwithstanding the fact that its been considered on numerous occasions before by various bodies and it is a policy decision for the Council to determine as to where we go on this. Certainly, I'm a little bit concerned at this state. I'm disappointed, frankly, that we've reached this particular point and if this settlement is in the public interests, to have it possible jeopardized on an issue that I thought was settled some time ago. But I think that there may be some alternatives, number one, the Council allow Southern Union to pass it through; number two, the Council refuses to sign the settlement agreement, or, thirdly, perhaps what we need to do is to condition our approval of the settlement on the Railroad Commission, reaffirming its final order and decision in the Docket #578 Austin case of 1975. Our requiring pass through of these benefits without prejudice, of course, to the company's right to pursue this in the Courthouse. What it all boils down to on the bottom line, Mr. Crowley is talking about attorney's fees which I would seriously doubt, though we probably shouldn't argue legal matters here, that I would doubt the possibility of that collection and certainly if the company is entitled to interest, well, this is for the court to decide. The bottom line is still \$2.3 million + for the Austin ratepayer. Are there any questions? I'll be glad to try and answer them."

COUNCILMEMBER GOODMAN: "I'd be interested in clarification on one point, Don. Southern Union, in essence, has changed its position?"

BUTLER: "In my discussions with Mr. Crowley, I would have to say that is correct. Certainly I never heard anything to the contrary so long as it was possible for them to not prejudice their law suit. The company's position I think, is that we've also changed ~~our~~ position because at one time we were insisting upon everybody passing this through. We're just concerned with Austin here."

GOODMAN: "Let me comment on that, in particular your last statement. What interest would we have in protecting the ratepayers of San Antonio or United Texas' customers? Isn't our primary obligation to our own citizens of Austin?"

BUTLER: "I think so."

CROWLEY: "Ms. Mayor, member of the Council, Mr. Butler just commented that he had discussed the company position with me. I think he was mistaken. I have not discussed it, Mr. Grenier, I believe. The company has not changed its position because we did not have a position initially. Southern Union was not a part of the drafting committee that put this settlement agreement together. And some months ago, we agree that the plan is good and we still agree with that. It's the only viable solution for our gas supplier, for all of our citizens and customers. We did not see the final wording until a very short time ago and then we found out that we were being discriminated against, could not collect our money, whereas all the other distribution companies could."

GOODMAN: "Do you understand the reason for that? The reason for that is that we have made the request that you pass through the savings to the customers of Austin and what goes on elsewhere isn't our responsibility. We don't have the right to request a certain action in San Antonio or to whatever limited degree, Corpus Christi. But we do have a right to protect those people here in Austin."

CROWLEY: "By the same token, Mr. Goodman, why should one party to the settlement agreement be treated differently from another party to the settlement agreement?"

GOODMAN: "As I just said. I'm not concerned with the other parties to the settlement except those that effect the citizens of Austin."

CROWLEY: "And my primary concern is Southern Union Gas Company. Let me point out to you the significance of this \$2.3 million. I think we lose track. This is money we paid out, it's still hanging in limbo. The current rate case that we have pending now with the City of Austin and on appeal to the Railroad Commission, we have not had a final order. However, we have had an examiner's report just very recently within the last two weeks. And in Appendix H, the examiner determined that the net income requirement for the test year for Southern Union, this was 1975, and it's almost too close, \$2,382,629. Almost the same amount that we're talking about. This is what we require in one year. It's not profit, it's what we need to service our debt. They are first mortgage bonds, our ventures, our sinking fund notes, our preferred stock, to say nothing for something for our stockholders. So, it's not a small amount."

MAYOR: "Further questions, Council? Okay, thank you, Mr. Crowley. I would assume that if the Council does not wish to take any action different from what we have already taken, our previous action stands. Mr. Butler, do we need to clarify our position..."

BUTLER: "I would think, given the position that Southern Union has now taken that, and also given the past history where we had an agreement with them once before in the form of an Ordinance, which agreement, in quotes, resulted in this whole problem that we have here, that perhaps not only should we let the past resolution stand, which requires some written assurance from Southern Union, but if they are going to take some position whereby they try to appeal this to the Railroad Commission, as they did in the past, perhaps we need to seek some qualification of the Railroad Commission's final order. To give you a little bit more toward your history on this particular case, at the time this so called agreement came to the City Council, the City Attorney then did not execute the Ordinance because it was felt this was probably appealable to the Railroad Commission and not enforceable and we may be getting back into that same trap again here, if we simply try to rely on the company's written agreement. That is it could be another matter that gets appeal to the Commission and two years from now when there is another rate case and you attempt to require them to pass this on seems as though this thing has to be brought to an end somewhere. In essence, what I am saying is, if there is some desire to see that this is passed through perhaps it needs to be communicated to the Railroad Commission through qualification of our execution."

MAYOR: "I sure think we ought to communicate that because that's the position we have been in ever since last June in wanting that to be a part of the condition to our agreeing to the settlement so I would say we would qualify our approval of the settlement agreement on the condition of passed through benefits to our ratepayers. I guess we ought to make that into a motion."

Motion

Councilmember Goodman moved that the Council adopt the following resolution:

"WHEREAS, the City of Austin has been engaged, since 1973, in extended litigation and administrative proceedings involving the price and supply of natural gas for distribution and sale to its citizens and for use as boiler fuel in its municipally owned electric generating facilities; and

WHEREAS, after having given proper consideration to all relevant matters, the City Council is of the opinion that it would be in the public interest to reach a settlement of such issues with its wholesale gas supplier; and

WHEREAS, by resolution adopted on June 23, 1977, the City Council approved execution of a settlement agreement with its said natural gas supplier subject to certain conditions; and

WHEREAS, a proposed form of settlement agreement, dated as of December 26, 1977, has been prepared which is in the public interest and in substantial accord with the conditions set forth in said resolution of June 23, 1977; and

WHEREAS, by resolution adopted March 2, 1978, the City Council authorized Southern Union Gas Company to execute such agreement subject, however, to its written assurance that it pass on to its ratepayers within the Austin district all benefits realized by it from the Settlement Trust. Provided, however, such assurance from Southern Union Gas Company would be without prejudice to its right to pursue its claim for gas costs unrecovered in the amount of approximately \$2.3 million, litigation concerning which is now pending in the 53rd District Court of Travis County, Texas; and

WHEREAS, Southern Union Gas Company is unwilling to enter into such agreement, requesting that it be allowed instead to recover from the proceeds of such Settlement Trust the amount in question; and

WHEREAS, one of the express conditions of Austin's resolution adopted June 23, 1977, approving settlement has been the full pass-through of benefits to the ultimate ratepayer; and

WHEREAS, the Railroad Commission of Texas has, in the G. U. D. #578, by Final Order dated December 19, 1975, heretofore denied Southern Union Gas Company the right to recover such amount from ratepayers, finding expressly that such recovery:

"requested by Southern Union Gas Company to recover unrecovered gas costs experienced by Southern Union Gas Company under the gas adjustment clauses used by it prior to December of 1974 is a nonrecoverable expense item which must be borne by Southern Union Gas Company." (Emphasis added); and

WHEREAS, Southern Union Gas Company has heretofore filed certain litigation in the 53rd District Court of Travis County, Texas, against the Railroad Commission of Texas appealing such decision of the Commission; and

WHEREAS, the City Council of the City of Austin is of the opinion that such prior decision of the Commission in G.U.D #578 should be, in all things, upheld without prejudice to any right of Southern Union Gas Company to pursue such litigation, Now Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN;

The City Manager is hereby authorized to execute that certain Agreement of Parties dated as of December 26, 1977, agreeing to "the Settlement Plan" attached thereto in G.U.D. #500, subject to the following qualification:

Notwithstanding any other provisions contained in the AGREEMENT OF PARTIES or THE SETTLEMENT PLAN, the agreement of the City of Austin ("Austin") hereto and to THE SETTLEMENT PLAN is expressly conditioned upon the entry of a final order by the Railroad Commission of Texas ("Commission") requiring that any and all proceeds and benefits from the Settlement Trust to which Austin's natural gas distribution company, Southern Union Gas Company ("Southern Union"), may be entitled, shall be flowed through, directly and immediately upon receipt thereof, to ultimate consumers of such

company's Central Texas Division as a reduction of rates for such ratepayers. Provided, however, this requirement shall not constitute a waiver of any rights Southern Union may have, and shall be without prejudice to Southern Union's rights, if any, to pursue certain litigation now pending in the 53rd District Court of Travis County, Texas, against the Railroad Commission of Texas, wherein Southern Union has appealed the order of the Commission in G.U.D. #578 denying Southern Union's right to recover certain alleged unrecovered gas costs in the amount of approximately \$2.3 million."

The motion, seconded by Mayor McClellan, carried by the following vote:

Ayes: Mayor McClellan, Councilmembers Cooke, Goodman, Mullen,
Snell

Noes: None

Absent: Councilmember Himmelblau, Mayor Pro Tem Trevino

ZONINGS SET FOR PUBLIC HEARING

The City Manager reported the following applications have been referred to the Planning Commission for recommendation and have been set for Public Hearing before City Council on March 30, 1978:

A. L. EXLINE, JR., M. D. By Doren Eskew C14-78-013	Rear of 3210 King Street	From "B" Residence 1st Height and Area To "O" Office 1st Height and Area
NATIONAL CONVENIENCE STORES By Gil Grover C14-78-014	3310 Northland Drive	From "A" Residence 1st Height and Area To "LR" Local Retail 1st Height and Area
H. C. McGARY C14-78-015	620 Applegate Road also bounded by Motheral Drive	From Interim "AA" Residence 1st Height and Area To "C" Commercial 1st Height and Area
ERNESTO DeKERATRY By Henry DeKeraty C14-78-016	12591 and 12593 Research Boulevard	From Interim "AA" Residence 1st Height and Area To "GR" General Retail 1st Height and Area
CHARLES H. MORRISON and JAMES D. MOORE C14-78-017	6616 South Congress Avenue and also bounded by William Cannon Drive	From "GR" General Retail 1st Height and Area To "C-1" Commercial 1st Height and Area
AUSTIN INDUSTRIES, INCORPORATED By Phil Mockford C14-78-018	4501 Burleson Road	From "D" Industrial 1st Height and Area To "D" Industrial 2nd Height and Area
THE CALCASIEU LUMBER COMPANY/ AUSTIN INDUSTRIES, INCORPORATED By Phil Mockford C14-78-019	12949-12951 Research Boulevard	From Interim "AA" Residence 1st Height and Area To "GR" General Retail 1st Height and Area
NPC REALTY COMPANY By John Reynolds C14-78-020	3200-3300 William Cannon Drive	From Interim "AA" Residence 1st Height and Area To "A" Residence 1st Height and Area
C.C. COOK, ET AL C14-78-021	1801-1811 Rutland Drive	From "LR" Local Retail 1st Height and Area To "GR" General Retail 1st Height and Area

C. B. SMITH SR., AND C. P. SANDERS C14-78-022	606-611 Kawnee Street 608-611 Swanee Street	From "A" Residence 1st Height and Area To "LR" Local Retail 1st Height and Area
DENNIS E. COWAN, ET UX C14-78-023	1709 Koenig Lane	From "A" Residence 1st Height and Area To "O" Office 1st Height and Area
O. H. CUMMINS By Thomas Francis C14-78-024	8202-8220 Manchaca Road 2001-2101 Shiloh Drive	From Interim "AA" Residence 1st Height and Area To "LR" Local Retail 1st Height and Area
FOREST M. CRUSE, SR. By Dale Johnson C14-78-025	2612-2614 South 1st 600 Cumberland Road	From "A" Residence 1st Height and Area To "C" Commercial 1st Height and Area
BEN H. POWELL, JR., ET AL By W. B. Houston C14-78-026	1829-1919 Kramer Lane	From Interim "AA" Residence 1st Height and Area To "DL" Light Industrial 1st Height and Area
AUSTIN PROFESSIONAL AUDIO By Chester Spaw C14-78-027	64 East Avenue also bounded by Rainey Street and River Street	From "A" Residence 1st Height and Area To "C" Commercial 1st Height and Area
MILDRED H. WALSTON AND ERNEST G. WALSTON By Tom Curtis C14-78-028	10226-10314 U. S. Highway 183 North	From Interim "AA" Residence 1st Height and Area To "GR" General Retail 1st Height and Area
MARCE L. AND ARAMINTO S. MORROW By P. M. Bryant C14-78-029	5300 Thunder Creek Road	From Interim "A" Residence 1st Height and Area To "GR" General Retail 1st Height and Area
RUDOLPH WILLIAMS C14-78-030	1906 East 18th Street	From "A" Residence 1st Height and Area To "B" Residence 1st Height and Area
RALPH D. RIVERA C14-78-031	2501 Montopolis Drive	From Interim "AA" Residence 1st Height and Area To "C" Commercial 1st Height and Area
DR. HENRY L. HILGARTNER, JR. By C. E. Baxter C14-78-032	1300 Colorado 200 West 13th Street	From "C" Commercial 3rd Height and Area To "C-2" Commercial 3rd Height and Area

LOVDIA JURECKA
By William Swail
C14-78-033

2003 Montclair

From "A" Residence
1st Height and Area
To "O" Office
1st Height and Area

CHARLES G.
TRENCKMANN, INDE-
PENDENT EXECUTOR
OF THE ESTATE OF
ELSE TRENCKMANN,
DEC'D
By Terry Sasser
C14-78-034

801-907 West Ben White
Boulevard, also bounded
by Radam Lane and James
Casey Street

From "A" Residence
1st Height and Area
To "C" Commercial
1st Height and Area

GLEN W. CASEY CON-
STRUCTION INC. AND
MOCKINGBIRD HILL,
LTD.
By Morris Olguin
C14-78-035

10511-10621 North Lamar
Boulevard

From "DL" Light Industrial
1st Height and Area
To "C" Commercial
1st Height and Area

S. W. RUFF LAND
DEVELOPMENT TRUST
By Fred Juby,
Trustee
C14-78-036

7439 North Lamar
Boulevard

From "A" Residence
1st Height and Area
To "C" Commercial
1st Height and Area

CARL M. SMITH,
INCORPORATED
C14-78-037

3215 Hampton Road

From "A" Residence
1st Height and Area
To "B" Residence
1st Height and Area

THE LBJ COMPANY
AND CEDAR PARK
FINANCIAL CORP-
ORATION
By Tom Curtis
C14-78-038

13803-13817 Highway
183 North

From Interim "AA" Residence
1st Height and Area
To "GR" General Retail
1st Height and Area

WOODSTONE SQUARE
DEVELOPMENT
COMPANY, INC.
By Larry Niemann
C14-78-039

3417-3423 Pecos Street
also bounded by West
35th Street

From "C" Commercial and
"A" Residence
1st Height and Area
To "BB" Residence
1st Height and Area

WAYNE DAYTON
C14-78-040

9200 Burnet Road

From "DL" Light Industrial
1st Height and Area
To "C-2" Commercial
1st Height and Area

LAMAR SAVINGS
ASSOCIATION
By Stanley Adams
C14-78-041

3801-3803 Hillbrook
Drive
5916 Mountain Climb
Drive also bounded
by Dry Creek Drive

From "O" Office and
"LR" Local Retail
1st Height and Area
To "A" Residence
1st Height and Area

PROVIDENT DEVELOP-
MENT COMPANY AND
LARRY O. JACKSON
By Robert Davis
C14-77-061

McCarty Lane and Old
Fredericksburg Road

From Interim "AA" Residence
1st Height and Area
To "BB" Residence (Tracts 1,
2, 3 and 9), "GR" General
Retail (Tracts 4 and 6),
"B" Residence (Tract 5),
"LR" Local Retail (Tracts 7
and 8)
1st Height and Area (Tracts
1-3 and 5-9)
6th Height and Area (Tract 4)

JAMES K. EICHEL-
BERGER JR. AND
MRS. LESTER ANNIE
CANTWELL
By Roane Puette and
A. S. Duncan
C14-77-159

4300-4365 Duval Road

From Interim "AA" Residence
1st Height and Area
To "BB" Residence
1st Height and Area

EARL HOWARD AND
JO SUE HOWARD
By Richard
Kammerman
C14-77-174

1715-1721 West Avenue
713-719 West 18th
Street

From "B" Residence
2nd Height and Area
To "O" Office
2nd Height and Area

JOHNSON HOME
Travis Post No. 76,
American Legion
C14h-77-023

2201 West 1st Street

From "C-1" Commercial
1st Height and Area
To "C-1-H" Commercial-Historic
1st Height and Area

WELLS-LaRUE HOUSE
Inge Walling
Whitaker
C14h-78-003

912 West 26th Street

From "B" Residence
2nd Height and Area
To "B-H" Residence-Historic
2nd Height and Area

LESER HOUSE
Felipe A. Latorre
C14h-78-004

3506 West Avenue

From "A" Residence
1st Height and Area
To "A-H" Residence-Historic
1st Height and Area

STORE BUILDING
William B.
Houston
C14h-78-005

508-514 Brazos

From "C-2" Commercial
4th Height and Area
To "C-2-H" Commercial-Historic
4th Height and Area

BREMOND STORE
BUILDING
William B.
Houston
C14h-78-006

125-131 E. 6th Street

From "C-2" Commercial
4th Height and Area
To "C-2-H" Commercial-Historic
4th Height and Area

March 9, 1978

L. L. COX
By C. Carpenter
C14-78-005

12126-12440 US 183
11835-12011 Jollyville
Road

From Interim "AA" Residence
1st Height and Area
To "C" Commercial
2nd Height and Area

ADJOURNMENT

The Council adjourned its meeting at 3:20 p.m.

APPROVED

Carlos Ketton McCluskey
Mayor

ATTEST:

Grace Monroe
City Clerk